

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACOB GOOD,

Defendant.

8:16CR29

MEMORANDUM AND ORDER

This matter is before the court on the defendant's motion to vacate under [28 U.S.C. § 2255](#), [Filing No. 68](#). In an order dated May 18, 2017, this court found on initial review that the defendant's earlier § 2255 motion should be summarily dismissed. In that motion he challenged an allegedly unconstitutional search and alleged ineffective assistance of counsel in failing to challenge the search. The court found the defendant had waived his challenge the propriety of the government's searches by pleading guilty. In the present motion, he raises the same issues, though he provides more factual detail.

A "second or successive" § 2255 motion cannot be entertained by the trial court without prior approval by the Court of Appeals. [28 U.S.C. §§ 2244\(b\)\(3\)](#) and 2255(h). Without pre-approval from the appropriate circuit court, a trial court cannot exercise jurisdiction over a second or successive § 2255 motion. See [Boykin v. United States](#), [242 F.3d 373](#), [2000 WL 1610732](#), at *1 (8th Cir. 2000) (unpublished opinion). Because the court has already denied Good's original § 2255 motion on the merits, his current § 2255 motion is an unauthorized, successive § 2255 motion over which this court lacks jurisdiction. See [id.](#); see also [Hill v. Morrison](#), [349 F.3d 1089](#), [1090](#) (8th Cir. 2003).

Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), the right to appeal the denial of a § 2255 motion is governed by the certificate of appealability requirements codified at 28 U.S.C. § 2253(c). *Jones v. Delo*, 258 F.3d 893, 900-01 (8th Cir. 2001). The court may grant a certificate of appealability only where the movant “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The movant must show that “the issues are debatable among reasonable jurists, that a court could resolve the issues differently, or that the issues deserve further proceedings.” *Flieger v. Delo*, 16 F.3d 878, 882-83 (8th Cir. 1994); see also *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Good has not shown that reasonable jurists would find the issues raised in his § 2255 motion debatable, that some other court would resolve the issues differently, or that the issues deserve further proceedings. The court therefore declines to grant a certificate of appealability in this case. Accordingly,

IT IS ORDERED:

1. Defendant’s Motion to Vacate ([Filing No. 68](#)) is denied without prejudice and the § 2255 action is dismissed for lack of jurisdiction.
2. The court will not issue a certificate of appealability in this matter.
3. A separate judgment of dismissal will be entered this date.

Dated this 3rd day of July, 2017.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge